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ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
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GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209

P. O. BOX 33847

WASHINGTON, D.C. 20033-0847

(703) 812-0400

TELECOPIER

(703) 812-0486

ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)

RETIRED

RUSSELL ROWELL
EDWARD F. KENEHAN
FRANK U. FLETCHER

OF COUNSEL

EDWARD A. CAINE*

WRITER'S NUMBER

(703) 812-0415

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JUL 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 15, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE OR LATE FILED

RE: Ex Parte Presentation - MM Docket No. 92-265

Dear Mr. Caton:

You are hereby advised that on this date the attached written ex parte presentations were made in the above-referenced proceeding to the following Commission personnel:

Chairman Hundt
Commissioner Quello
Commissioner Barrett
Commissioner Chong
Commissioner Ness
William E. Kennard, Esquire
Meredith Jones, Esquire
James W. Olson, Esquire
Diane L. Hofbauer, Esquire

The presentations follow meetings held between representatives of United States Satellite Broadcasting Company, Inc. ("USSB") and the signatories of the written presentations. The presentations submitted herewith support USSB's "Opposition to Petition for Reconsideration of the National Rural Telecommunications Cooperative," submitted in MM Docket No. 92-265, on July 14, 1993. It is believed that the original of the letter from Congressman Al Swift was delivered to Chairman Hundt by Mr. Swift's office on July 8, 1994.

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List A B C D E

An original and one copy of this letter and the attached presentations are being filed. If additional copies of this filing are required, USSB will supply them immediately upon request.

Should any question arise concerning this matter, or should any additional information be necessary or desired, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney
Counsel for United States
Satellite Broadcasting
Company, Inc.

PAM:dlr
cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
William E. Kennard, Esquire
Meredith Jones, Esquire
James W. Olson, Esquire
Diane L. Hofbauer, Equire

JEFF BINGAMAN
NEW MEXICO

110 HART SENATE OFFICE BLDG.
WASHINGTON, DC 20510-3102
(202) 224-5521
IN NEW MEXICO—1-800-443-8658
TDD (202) 224-1792

United States Senate

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I am aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. I believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS), are not covered by Section 19.

As the title of the Cable Act clearly indicates, that legislation specifically was designed to address the problems experienced by the public as a result of cable's practices.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable if the FCC determines that such contracts are in the public interest. I submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

I believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and that the rules adopted by the FCC thus properly

ALBUQUERQUE (505) 766-3636
LAS CRUCES (505) 523-6561
ROSWELL (505) 622-7113
SANTA FE (505) 988-6647

implement Section 19. I understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

I appreciate your consideration of these views.

Sincerely,

Jeff Bingaman
United States Senator

JB/mss

Congress of the United States
House of Representatives
Washington, D.C. 20515

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Commissioner Hundt:

We are aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. We believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS) are not covered by Section 19.

As the title of the Cable Act clearly indicates, the legislation specifically was designed to address the problems suffered by the public as a result of cable's monopolistic practices. Many of our constituents complained about cable operator's abuses of their power.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable, if the FCC determines that such contracts are in the public interest. We submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly <u>within</u> DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

We believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and the rules adopted by the FCC thus properly implement Section 19. We understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

We have attached material which provides graphic illustration of the fact that the FCC's present rules will make extensive programming available to DBS customers.

We appreciate your consideration of our views.

Sincerely,

Pete V. Dominici
U.S. Senate

Martin Olav Sabo
U.S. House of Representatives

Dave Durenberger
U.S. Senate

Bruce F. Vento
U.S. House of Representatives

Robert H. Michel
U.S. House of Representatives

Bill Richardson
U.S. House of Representatives

John Edward Porter
U.S. House of Representatives

Jim Ramstad
U.S. House of Representatives

AL SWIFT
2d District, Washington

DISTRICT OFFICES:

308 Federal Building
Bellingham, WA 98225
(206) 733-4500

201 Federal Building
Everett, WA 98201
(206) 252-3188

TOLL FREE
1-800-562-1385

Congress of the United States
House of Representatives
Washington, DC 20515-4702

1502 Longworth House Office Building
Washington, DC 20515-4702
(202) 225-2605

July 8, 1994

COMMITTEE ON
ENERGY AND COMMERCE

Chairman,
Subcommittee on Transportation and
Hazardous Materials

Subcommittee on Energy and Power

COMMITTEE ON
HOUSE ADMINISTRATION

Chairman,
Subcommittee on Elections

Subcommittee on Accounts

JUL 13 1994

The Honorable Reed Hunt
Chairman, Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Dear Chairman Hunt:

I am writing you concerning the issue of program exclusivity as it pertains to Direct Broadcast Satellite (DBS) services. I was an active proponent of the purposes of the 1992 Cable Act, and in particular, the goal of creating viable and robust DBS services to offer competition to existing cable monopolies.

As you know --and as the Act's title clearly indicates--the legislation was specifically designed to address the problems suffered by the public as a result of monopolistic practices by certain large cable companies. Competition by DBS was intended to be part of the public's solution, never part of the problem. Therefore it is my belief that a search of the Act and the legislative history will confirm that only program contracts involving cable operators are intended to fall within the province of the 1992 Cable Act.

In that regard, I want to state my support for the Commission's conclusion in its "First Report and Order" in MM Docket No. 92.265. I believe the Commission properly construed the exclusivity provisions of Section 19 as applicable to cable operators only. And it is my understanding that the Department of Justice, and the attorneys general of 45 states also agree that there is no bar in the Cable Act of 1992 to exclusive contracts by DBS providers and programmers.

Thank you for your consideration of my views on this matter.

Sincerely,

Al Swift
Member of Congress

AS/lbk